

NATURAL RESOURCES - LAW AND ORDER - CIVIL FINE, FORFEITURE, PENALTY ACT
Ordinance # 06-400-07

Article I. Purpose; Findings

1.01. *Purpose.* It is the purpose of this Ordinance to identify the penalties associated with violation of Tribal laws and regulations regarding the hunting, fishing trapping and gathering rights of Tribal members. The Tribe recognizes that these rights are exercised as part of the sovereign rights of the Tribe, but more importantly, as a staple of many family meals and as such desires to protect the ability of members to engage in these rights in a reasonable manner.

1.02. *Findings.* The Tribal Council of the Little River Band of Ottawa Indians finds that:

a. the Constitution of the Little River Band of Ottawa Indians delegates to the Tribal Council the responsibility to "...exercise the inherent powers of the Little River Band by establishing laws through the enactment of ordinances and adoption of resolutions not inconsistent with this Constitution:

1. to govern the conduct of members of the Little River Band and other persons within its jurisdiction;

2. to promote, protect and provide for public health, peace, morals, education and general welfare of the Little River Band and its members[.]" *Article IV, Section 7(a).*

b. the Little River Band of Ottawa Indians has the authority and responsibility to manage the natural resources within its jurisdiction in order to provide subsistence hunting, fishing, trapping and gathering resources for current and future Tribal members; and

c. many members of the Little River Band of Ottawa Indians utilize the ability to hunt, fish, trap, and gather to supplement family groceries and as primary resources for family meals; and

d. the Tribal Council desires to set civil fines, forfeitures, and penalties at levels which identify the ability to enforce tribal laws and regulations for the protection of the resources, and to encourage reasonable and safe resource utilization practices.

Article II. Adoption; Amendment; Repeal; Severability

2.01. *Adoption.* This Ordinance is adopted by Tribal Council resolution # 06-0830-600.

2.02. *Amendment.* This Ordinance may be amended in accordance with the procedures set forth in the Administrative Procedures Act - Ordinances.

2.03. *Repeal.* This Ordinance may be repealed in accordance with the procedures set forth in the Administrative Procedures Act - Ordinances.

2.04. *Severability.* If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

Article III. Definitions

3.01. *General.* As used in this Ordinance, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings.

3.02. *Enforcement Officer* means a Public Safety Officer charged with enforcement of Tribal, federal and applicable state laws and regulations regarding hunting, fishing, gathering and trapping within the Little River Band of Ottawa Indian's jurisdiction.

3.03. *Tribal laws and regulations* means those laws and regulations setting forth limitations, restrictions or other guidance or direction regarding the hunting, fishing, gathering and trapping activities within the Little

River Band of Ottawa Indian's jurisdiction. The application of this phrase includes laws and regulations in conjunction and individually.

Article IV. Natural Resources Violations Jurisdiction

4.01. *General.* The Tribal Court shall have jurisdiction over all civil penalties, violations of regulations, licensing or permitting not otherwise specifically delegated to the Natural Resource Commission in the Natural Resource Commission Ordinance.

4.02. *Recognition of Cultural Significance of Hunting, Fishing, Trapping and Gathering.* The use of hunting, fishing, gathering and trapping rights retained by the Tribe, and exercised by members under jurisdiction of the Tribe are subsistence hunting, fishing, trapping and gathering activities. As such, it is the policy and philosophy of the Little River Band of Ottawa Indians that exercise of these rights for that purpose should be recognized in all cases of violations of laws and regulations set forth regarding those rights. While a member is expected to know, understand and comply with those laws and regulations, it is also understood that many times these activities are the basic food gathering activities for members, and supplement limited incomes of other members. As a result, the Tribal Court is authorized to make necessary allowances in the implementation of the civil penalties set forth in this ordinance.

Article V. Enforcement and Penalties

5.01. Civil Penalties.

a. *Fine classifications.* The following fines shall apply to the civil infractions in these Regulations:

1. Class A \$50
2. Class B \$100
3. Class C \$250
4. Class D \$500
5. Class E \$1000

b. *Repeat offenders violations.* A penalty of up to 3 times the amount of the base civil fine for each offense may be imposed if the violator is found liable for a second or any subsequent violation of the same provision.

5.02. Procedure for Civil Infractions.

a. Any person subject to the civil jurisdiction of the Little River Band and who is charged with an infraction under Tribal laws and regulations shall be subject to the procedures and remedies provided for in this Ordinance.

b. Unless expressly provided for elsewhere in these regulations, an Enforcement Officer shall issue a civil citation for each civil infraction of Tribal laws and regulations.

c. Each citation shall contain the following information:

1. the express provision of the regulations alleged to be violated;
2. the substance of the violation alleged to have occurred;
3. the maximum forfeiture that can be imposed for the violation;
4. provide notice to the violator that the violator may appear at a civil hearing before the Tribal Court, on the cited infraction;
5. the signature of the violator acknowledging receipt of the citation, amount of fine, and notice of the hearing date, time, and place.

d. Upon issuance of an infraction notice, the Enforcement Officer may seize all plants, fish, wildlife, or migratory birds in the possession of the suspected violator.

e. *Pay and forfeiture.* A violator who is issued a citation may pay the fine amount indicated on the citation in lieu of appearing before the Tribal Court.

f. If the violator chooses to use the "pay and forfeit" procedure, the violator shall deliver the fine amount, in the form of check or money order, along with the citation, by mail or in person, to the Tribal Court within 14 days as provided on the citation. No other proceedings under this Ordinance shall be initiated against any person who pays the fine as provided in this section.

g. If a violator does not use the "pay and forfeit" procedure under this section, the violator shall appear before the Tribal Court on the date listed on the citation.

h. Upon completion of the hearing, the Tribal Court shall issue an order to pay a fine, restitution, community service, or other remedy provided set forth in this Ordinance; or if the Tribal Court determines that the suspected violator has not violated laws and regulations of the Tribe, the Tribal Court shall relieve the fine.

i. The Tribal Court may assess reasonable hearing costs upon any person whom the Tribal Court finds liable of the infraction cited.

5.03. *Immunity of Tribal Officers.* Enforcement Officers, Tribal employees, Tribal Attorneys, and Natural Resource Commissioners, and Tribal Court officers and employees shall be immune from civil liability for acts committed in connection with the enforcement of Tribal or federal conservation laws and regulations.

5.04. *Field Bond.*

a. Upon issuing a citation, an Enforcement Officer may demand that a suspected violator post a Field Bond in an amount equal to the maximum penalty amount of the civil penalty plus the liquidated damages amount for the violations in the citation.

b. Field Bond property may be cash or other property of the violator that the Enforcement Officer reasonably believes is valued at an amount at least equal to the required citation and liquidated damages amounts.

c. A Field Bond is justified and may be collected by an Enforcement Officer using any reasonably necessary, non-deadly force, when a violator who is issued a citation:

1. refuses to sign the citation; or

2. cannot be, or refuses to be, identified; or

3. is an enrolled member of the Little River Band of Ottawa Indians, Little Traverse Bay Band of Odawa Indians, Grand Traverse Band of Ottawa and Chippewa, or

4. any other reason that leads the Enforcement Officer to believe that the violator's presence at the Tribal Court hearing cannot be assured, or the violator's willingness or ability to pay the fine or liquidated damages assessment reasonably can be questioned; AND if the Enforcement Officer determines that:

5. seizure of the violator's property is necessary to secure the important Tribal interest of guaranteeing the presence within Tribal jurisdiction of sufficient assets of the violator to secure payment of the citation(s) and restitution to the Little River Band for any damages determined by the Tribal Court to have resulted from civil violation of Tribal laws and regulations; and

6. there is a need for prompt action because it is likely that the violator will leave the jurisdiction of the Little River Band with violator's property and not return.

d. The Enforcement Officer shall issue a Bond Notice to a suspected violator when the officer takes possession of any bond property.

1. The Bond Notice shall be prepared in triplicate and shall be signed by the suspected violator.

2. One signed copy shall be attached to the civil citation and filed with the Tribal Court; a second copy shall be retained by the Enforcement Officer for enforcement record; and a third copy shall be given to the suspected violator.

3. The Bond Notice shall contain the following information:

- A. date;
- B. suspected violator's name and address;
- C. complaint number;
- D. alleged violation;
- E. dollar amount of the fine;
- F. estimated liquid damages amount;
- G. identification number and signature of the issuing Enforcement Officer;
- H. if cash bond is posted, the amount of the cash received;
- I. if property bond is posted, a description of the property, including serial and model numbers, when available, and the Enforcement Officer's estimate of the value of the property;
- J. information concerning the redemption or return of the Field Bond;

e. Within 2 business days of being posted, all cash bonds shall be deposited in a trust account established by the Tribal Court through the Tribe for that purpose.

f. All bond property shall be inventoried, labeled with the suspected violator's name and citation number, and placed in secured storage within 24 hours of being posted.

g. *Bond Redemption.* Non-cash bond property may be redeemed at any time during normal business hours by posting of a cash bond, or payment for damages, with the Tribal Court.

1. Post-judgment redemption must occur within 60 days of the entry of the Tribal Court's final order regarding the infraction, unless an appeal is filed.

2. In any case of bond redemption, the Tribal Court shall issue a receipt for the cash redemption value, which receipt shall be acknowledged by the Enforcement Officer as payment for the redeemed property.

h. If the suspected violator is found liable for the alleged infraction, and there is no appeal, the bond shall be applied in satisfaction of the Tribal Court's order.

1. Any non-cash bond property shall be sold at auction, and the proceeds shall be applied to the judgment.

2. Any excess proceeds shall be returned to the violator.

i. Failure to appear at the Tribal Court hearing shall result in entry of a default judgment and forfeiture of bond.

j. If the suspected violator is found to be not liable for the alleged infraction, the Enforcement Officer shall return the bond property promptly.

5.05. *Damages.*

a. *Restitution for Improper/Illegal Harvest or Possession.*

1. In addition to any other penalties provided by law, a person found liable for a civil infraction or forfeiting bond, upon a charge of illegal taking, killing, or possession of a plant, fish, migratory bird, or wildlife creature, shall reimburse the Tribe for each plant, fish, migratory bird, or wildlife creature, according to the schedule below.

SPECIES	FINE
Sturgeon, Grayling, Elk, Bear, any Endangered Species	\$2500
Deer	\$1500
Wild turkey, Beaver, mink, otter, badger, bobcat Muskellunge, Tiger muskellunge	\$1000
Lake Trout, Brown trout, Rainbow trout, brook trout, Largemouth bass, Smallmouth bass,	
Walleye, Northern pike, Whitefish, Menominee whitefish	\$100
Rabbit, muskrat, squirrel, raccoon, Ruffed grouse, woodcock, morning dove,	

ringneck pheasant, quail, sharptail grouse	\$100
Any fish or game animal not named	\$50

2. When the Tribal Court enters an Order declaring bond to be forfeited, the Tribal Court may also order that some or the entire forfeited bond be paid as restitution to the Tribe according to the above schedule. A hearing to determine the amount of restitution is not required for an Order of Restitution under this section.

b. *Restitution for other damages.* The Tribal Court shall prepare and annually shall review and revise, as necessary, a Schedule of Liquidated Damages (SLD) calculated to approximate the cost of equitable restitution to the Tribe for damage that is caused by a violation of Tribal laws and regulations. In calculating other liquidated damages, the Tribal Court shall consider, in addition to any other factors reasonably deemed relevant:

1. cost to the Tribe of producing and protecting the resource, including the costs of law enforcement that shall include the general overall costs and cost particularized to the individual violation(s) where appropriate;
2. cost of replacing or restoring the resource, including, but not limited to, survey of the damaged resource, damage appraisal, investigational assistance and reports, rehabilitation, reforestation, loss of future revenue, and loss of productivity;
3. damages for trespass;

c. The Tribal Court shall ensure that the SLD is posted annually in the Tribal buildings, and published in local newspapers in Manistee and Mason County.

c. In any hearing on a suspected infraction of the laws and regulations of the Tribe, the Tribal Court shall presume that the amount fixed on the SLD represents the damages owed to the Tribe as restitution if the suspected violator is found liable for the infraction.

d. This presumption may be rebutted by evidence that shows, by clear and convincing evidence, that the amount indicated in the SLD is so excessive in a particular case as to be punitive, or so inadequate in a particular case as to result in a gross deprivation of adequate restitution.

e. In any case in which the presumption successfully is rebutted, the parties may introduce evidence to prove the actual damages as in any other civil case.

5.06. *Community Service.*

a. In addition to any civil penalty or liquidated damages imposed, or community service, set out in Tribal laws or regulations, the Tribal Court may require, in lieu of, or in addition to any fine impose, and liquidated damages, community service of a type to be determined by the Tribal Court.

b. Examples of such community services may include, but may not be limited to, serving a feast for the elders, providing food and services to the membership during the spring or fall feasts, providing a feast for the membership, clean-up of Tribal lands, provide assistance to the Conservation Department biological staff, as requested.

c. The Tribal Court may consult with the Cultural Preservation Committee or designated Cultural Department in an effort to determine an appropriate remedy that best befits Aníshinaábek traditions for the violation.

d. For any finding of liability for a violation that occurs during a ceremonial harvest, the penalty shall be exclusive of fines or liquidated damages, but all other provisions of civil penalties may apply.

5.07. *Remedial Harvest Education Course.* In addition to the civil penalties set out in Tribal laws and regulations, the Tribal Court may require any violator to complete a remedial Tribal Harvest Education Course.

5.08. *Costs.* The Tribal Court also may charge the violator with payment of all reasonable costs associated

with the civil prosecution of Tribal laws and regulations, including collection of any settlement, fine, or restitution costs; witness expenses; accounting expenses; demand letters; hearing costs; and attorney fees.

5.09. Revocation of Harvest Privileges.

a. In addition to any fine imposed by the Tribal Court as a result of a finding of liability for an infraction of Tribal laws or regulations, the Tribal Court may revoke a Tribal citizen's harvesting privileges if the member is found:

1. to be liable for 3 infractions during a 3-year period;
2. to have carelessly handled a firearm, trap, bow, or crossbow that caused accident and injury to a person or property;
3. to have carelessly handled a firearm, trap, bow, or crossbow that caused injury to fish, migratory birds, or wildlife;
4. to have carelessly injured a human being by use of a firearm, trap, bow, or cross bow;
5. to have caused accidental injury or death to a person by use of a firearm, trap, bow, or cross bow, and fled or failed to render assistance;
6. to have failed to comply with the terms of any Tribal Court order, or suspension of privileges.

b. Any revocation of a member's harvesting privileges shall be for a period not to exceed 36 months.

c. In the event that the Tribal Court is considering whether to revoke a member's harvesting privileges, the Tribal Court shall cause notice to be delivered by registered or certified mail, or personal service to the member.

1. The notice shall be delivered at least 14 calendar days before the Tribal Court hearing called to determine the case.

2. The notice required by this section shall contain the following:

A. a clear statement that the Tribal Court will consider whether to revoke the offender's privilege of exercising harvesting privileges, and that the privilege may be revoked for up to 24 months.

B. a statement of the basis for the proposed action including a list of the infractions or violations involved;

C. the date of the Tribal Court hearing to consider the case;

D. a statement that the member has the right to appear before the Tribal Court, to present evidence, to call witnesses, and to be represented by legal counsel at their own expense.

Article VI. Criminal Offenses

6.01. *Criminal Offenses and Procedures.* Any person subject to the criminal jurisdiction of the Little River Band who is charged with a criminal offense under this Article shall be prosecuted under the Rules of Criminal Procedures and, if found guilty, penalized as a criminal offender as prescribed by Tribal law.

6.02. *Resisting or Obstructing an Enforcement Officer.* A person shall be guilty of the criminal offense of resisting or obstructing an Enforcement Officer if the person:

a. physically assaults, or otherwise resists or obstructs any Enforcement Officer authorized to enforce the provisions of Tribal laws or regulations; or

b. knowingly gives any false report to any Enforcement Officer.

6.03. *Eluding an Enforcement Officer.* A person shall be guilty of the criminal offense of eluding an Enforcement Officer if the person knowingly flees or attempts to evade an Enforcement Officer following a visible or audible signal to stop. A visible or audible signal under this section may include the use of hands, voice, emergency lights or sirens.

6.04. *Threat or Intimidation to an Enforcement Officer.* Any person shall be guilty of the criminal offense of threat or intimidation of an Enforcement Officer, who uses unjustified force or violence or threaten the use thereof on an Enforcement Officer for the purpose of interfering or influencing the performance of an official duty shall be guilty of the criminal offense of threat or intimidation to an Enforcement Officer.

6.05. *False Impersonation of an Enforcement Officer.* Any person shall be guilty of the criminal offense of false impersonation of an Enforcement Officer who falsely represents himself to be an Enforcement Officer authorized to enforce the provisions of Tribal laws and regulations, or shall assume to act as such an Enforcement Officer, without having been duly appointed.

6.06. *Disorderly Conduct.* Any person shall be guilty of the criminal offense of disorderly conduct if the person causes a public inconvenience, annoyance, or alarm; or creates a risk thereof by engaging in fighting or threatening to fight; or making an offensively coarse utterance, gesture or display; or creates a hazardous or physically offensive condition by behavior that is threatening, challenging to fight or fighting is prohibited.

6.07. *Trafficking Fish and Game.* A person shall be guilty of the criminal offense of trafficking fish and game if the person:

- a. sells or barter, or has in his possession with intent to sell or barter;
- b. exposes or offers for sale or barter; or
- c. ships for commercial purposes, or has in their possession with intent to ship for commercial purposes, any big or small game or fish or parts thereof.
- d. Provided that, this section shall not apply to the sale or possession of fish lawfully taken during commercial treaty fishing season, the possession or sale of hides or antlers of game animals lawfully taken, or the sale or barter between members or descendants of any federally recognized Indian Tribes for the personal use of such members.

6.08. *Interference with Hunting or Fishing Related Property.* A person shall be guilty of the criminal offense of interference with the hunting or fishing-related property of another if the person, without the permission of the owner, uses, operates, occupies, moves, disturbs, taints or otherwise tampers with fishing gear, firearms, vehicles, boats, blinds, feed plots or other hunting or fishing-related personal property belonging to another.